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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,350	01/30/2002	Jean-Marie Badoz	MICROM6	1148
7590	01/14/2004		EXAMINER	
Gary M Cohen Strafford Building Number Three Suite 300 125 Strafford Avenue Wayne, PA 19102			BUMGARNER, MELBA N	
			ART UNIT	PAPER NUMBER
			3732	
DATE MAILED: 01/14/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/049,350	BADOZ, JEAN-MARIE	
	Examiner Melba Bumgarner	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 November 2003.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 10-30 is/are pending in the application.

4a) Of the above claim(s) 16-25 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 10-12, 15 and 26-30 is/are rejected.

7) Claim(s) 13 and 14 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 10, 11, 26, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Brockway et al. (4,684,344). Brockway et al. disclose an apparatus for providing a filling material into a canal of a tooth comprising at least one recess 32 and a cartridge 34 containing a dose of the filling material 36 received in the recess (column 2 line 52) and a heater 30 coupled with the recess, wherein the heater operates to bring the filling material up to and maintained at a desired temperature (column 1 line 29).  
Brockway et al. disclose placing the filling material into a root canal cavity and disposing the cartridge after use (column 1 lines 27, 60). The limitation of “approximately corresponds to an amount of the filling material which is needed to treat and fill one single canal” is interpreted taking into account that it is defined in terms of the varying size of human anatomy (one single canal). Patentable weight is not given to the inferentially claimed root-canal instrument. As to claim 11, the recess is formed in a heat-conducting element. As to claim 27, the filling material is gutta percha (column 2 line 55).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brockway et al. in view of Johnson (5,098,298). Brockway et al. disclose an apparatus that shows the limitations as described above and the heat-conducting element is a heat-conducting heating body; however, they do not show the heater of a resistive electric element coupled with the body. Johnson teaches heating a container of filling material with a heater that is a resistive electric element (column 5 line 35, figure 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the heater of Brockway et al. to have resistive electric element as in Johnson in order to have an easy to make and use heater to heat the filler material before use. As to claim 15, the cartridge is an elongate vessel having a longitudinal axis and an end exposed, and the recess is shaped to receive the vessel and the vessel can be oriented such that the longitudinal axis is substantially vertical. It would have been an obvious matter of choice to one of ordinary skill in the art as to intended use of the vessel.

5. Claims 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brockway et al. in view of Bender (5,707,234). Brockway et al. disclose an apparatus that shows the limitations as described above and the cartridge of a hollow vessel;

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however, they do not show the vessel fitted with a sealed closure. Bender teaches a dental cartridge of hollow vessel fitted with a sealed closure 70. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cartridge of Brockway et al. to be fitted with a sealed closure in order seal the contents of the vessel in view of Bender. As to claim 29, both Brockway et al. and Bender show the vessel being a cylinder having an integral bottom at one end, defined as the bottom formed as a unit with the cylinder, and Bender shows the sealed closure at the opposite end. As to claim 30, Bender shows the vessel formed of plastic material (column 4 line 52).

***Allowable Subject Matter***

6. Claims 13 and 14 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

7. Applicant's arguments with respect to the rejected claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melba Bumgarner whose telephone number is 703-305-0740. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

*Melba Bumgarner*

Melba Bumgarner  
Patent Examiner

*Kevin Shaver*  
KEVIN SHAVER  
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